Supreme Court, U.S.
FILED

03 689 JUN 30 2003

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2003

Melody F. Primm,
Petitioner

v.

Country Companies,
Respondents

On Petition for a Writ of Certiorari to the Court of Appeals, Division One, for the State of Washington

PETITION FOR A WRIT OF CERTIORARI

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38 pp

QUESTIONS PRESENTED

The Court of Appeals, Division One, for the State of Washington has held that Respondent is entitled to attorney fees and costs even though Respondent has failed to comply with proper procedure for obtaining attorney fees and costs, and even though Petitioner, Melody Primm, had colorable claims at law below. This holding raises substantial federal questions that warrant immediate review by this Court:

1. Whether the state court's decision, which cannot be reconciled with state law, is inconsistent with the Due Process Clause of the 14th Amendment.

2. Whether the arbitrary and standardless grant of attorney fees violates the Equal Protection and Due Process Clauses.

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A-3: Commissioner's ruling granting attorney fees and costs if stipulated conditions are met.

A-4: King County Superior Court order sanctioning Melody and threatening her with contempt if she should file a CR 60 motion against the judgment confirming an arbitration award.

A-5: Melody's letter on 4/13/01, to Country Companies's insurer "Crum and Forrester" addressing the confusing circumstance where Melody's credit was attached and whereby Country Companies obtained a judgment on arbitration fees that had already been paid gratuitously by Crum and Forrester.

The Petitioner herein respectfully prays that a Writ of Certiorari be issued to review the judgment of the Court of Appeals, Division One, of the State of Washington in this case. In plain contravention of the requirements of the Constitution of the United States and state law, the state Court of Appeals has embarked on an ad hoc, standardless, and lawless exercise of judicial power, which appears designed to thwart the right of parties to represent themselves pro se. Because the grant of attorney fees and costs without due process is governed directly by the Constitution, as well as by state law, the court's decision involves issues of utmost ***federal*** importance.

OPINIONS BELOW

King County Superior Court Order sanctioning Melody and prohibiting her from filing a CR 60 motion against the judgment confirming an arbitration award under penalty of contempt. A-4.

The Commissioner's ruling granting attorney fees and costs if certain conditions are met (which were never met) is not reported. A-3.

Court of Appeals, Division One, order denying Melody's motion to modify Commissioner's ruling is not reported. A-2.

Washington Supreme Court order sanctioning Melody and denying certiorari from Court of Appeals order is not reported. A-1.

JURISDICTION

The Washington Court of Appeals filed its decision affirming the Commissioner's ruling and denying Melody's Motion to modify that ruling on July 31st, 2002. The Washington Supreme Court filed its decision on April 1, 2003. The jurisdiction of this Court therefore is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOVLED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". U.S. Const. Amend. XIV, § 1.

STATEMENT OF THE CASE

On 7/13/00, an arbitration award was rendered in favor of Country Companies. On 8/11/00, the arbitration award was confirmed by the King County Superior Court. ***Mysteriously***, however, Country Companies's insurer, Crum & Forster, paid expenses that Melody was obliged to pay under that judgment. Crum & Forster ***suspiciously*** paid these expenses ***before*** the arbitrator rendered his award since the invoice

showing payment is dated 7/11/00, and the arbitration award was rendered on 7/13/00. Crum & Forster paid all of the arbitration expenses ***without Melody's knowledge***. Nevertheless, even though these expenses were paid by an ***officious intermeddler***, namely Crum & Forster, Country Companies ***inexplicably*** obtained a judgment lien for these expenses as if they had never been paid. That judgment lien was obtained under color of law pursuant to RCW 7.04.150.

Melody attempted to raise the issue of ***satisfaction of judgment*** and ***procurement of judgment through fraud*** in King County Superior Court, but is barred from doing so on pain of contempt.

On account of Crum & Forster's covert conduct, the arbitrator got his ***money up front***, before the arbitration; Country Companies was ***insulated*** from liability; and Crum & Forster was ***protected from the danger of indemnifying*** Country Companies for its blatant breach of contract, defamation and other liabilities. Yet, although the judgment lien was thus satisfied, and procured by fraud, Melody's property is subject to a lien. In her attempt to challenge this pro se, the Superior Court, Court of Appeals for Division One, and the Washington Supreme Court have heaped ***unconscionable*** attorney fees that exceed ten thousand dollars. Moreover, these fees and costs were granted without compliance with state law or Constitutional Due Process. The arbitrary standard against pro se litigants also violates Equal Protection.

REASONS FOR GRANTING THE PETITION

1.THE DECISION OF THE COURT BELOW FAILED TO COMPLY WITH STATE LAW IN THE GRANT OF ATTORNEY FEES AND COSTS AND IS THEREFORE AN UNCONSTITUTIONAL VIOLATION OF PETITIONER, MELODY PRIMM'S, DUE PROCESS RIGHTS.

It is improper for the Court of Appeals to award attorney fees since Country Companies failed to request them. In not one brief on record, has Country Companies requested attorney fees. RAP 18.9 states that a party seeking attorney fees must specifically request them. In neither its motion to dismiss nor in its response to the Court's sua sponte motion on the merits has Country Companies requested attorney fees. Countless cases on point stress that the request for attorney fees must be included with argument in brief. Industrial Coatings Co. v. Fidelity & Deposit Company of Maryland, 117 Wn.2d 511, 817 P.2d 393 (1991); In re Marriage of Mull, 61 Wn.App. 715, 812 P.2d 125 (1991); Sacco v. Sacco, 114 Wn.2d 1, 784 P.2d 1266 (1990).

Country Companies's briefs for its Motion to Dismiss and its response to the Court's Motion on the Merits both lack argument for attorney fees. Indeed, none of these briefs mention attorney fees. It is clearly stated elsewhere, in Camer v. Seattle School District No. 1, 52 Wn.App. 531, 762 P.2d 356 (1988), cert. denied 493 U.S. 873 (1989), that the court will deny attorney fees for lack of request and lack of

supporting written argument in its briefs. Moreover, where basis for award of attorney fees is not raised in a reply brief, attorney fees cannot be awarded. Hamilton v. Huggins, 70 Wn.App. 842, 855 P.2d 1216 (1993). Country Companies never asked for any attorney fees in any of its reply briefs. In defiance to all of the foregoing case law on point, the Court of Appeals affirmed the Commissioner's ruling awarding attorney fees to Country Companies.

The Commissioner stated that Country Companies is only entitled to attorney fees ". . .upon its compliance with RAP 18.1". RAP 18.1(c) states very clearly that a party seeking attorney fees must do so either 10 days prior to the time set for oral argument; or, pursuant to a motion on the merits, a party must serve and file such an affidavit with its response or motion. Oral argument was held on April 12, 2002 for the Motion on the Merits. No financial affidavit was ever filed by Country Companies, neither 10 days before the oral argument held on 3/9/02, nor with its response for the Motion on the Merits hearing on April 12, 2002. Since Country Companies failed to comply with RAP 18.1, then according to the Commissioner's own ruling Country Companies is not entitled to attorney fees.

For failure to comply with its own procedure, the foregoing shows clear Due Process violations.

2.THE PARTIALITY AGAINST MELODY IN THE COURT BELOW VIOLATES DUE

PROCESS AND EQUAL PROTECTION AND THEREFORE CONSTITUTES AN UNCONSTITUTIONAL GRANT OF ATTORNEY FEES AND COSTS.

When the Superior Court of Washington for King County denied Melody's attempt to modify her motion to state a CR 60 motion, on pain of contempt, Melody filed a notice of appeal. Subsequently, the Washington Court of Appeals Clerk for Division One assumed the prerogative of filing motions against Melody sua sponte. For example, after the King County Superior Court told Melody it would bill her in the mail for filing of the notice of appeal, with full knowledge of this, the Court of Appeals made a Motion to Dismiss Melody's appeal because the filing fee was allegedly late. However, the rules of Appellate Procedure do not provide for dismissal of appeals for untimely payment of filing fees. State v. Ashbaugh, 90 Wash.2d 432, 583 P.2d 1206 (Aug. 31, 1978). Accordingly, the Court of Appeals promptly dismissed its sua sponte Motion to Dismiss.

Subsequently, even though Melody had 45 days to file a brief from the date clerks papers are filed for, the Court of Appeals inexplicably made a motion to sanction Melody, and potentially dismiss her appeal for her alleged untimely filing of her appellant brief. The Court of Appeals made its Motion even though time was still running for Melody to file. Moreover, the Court of Appeals made its Motion even though ***time was still running for Melody to file***. Moreover, the Court of Appeals made its Motion even though no "legal

authority [apparently exists] that requires dismissal of an appeal for dilatory filing of [an appellant brief]". Heritage Farms Inc. v. Lamanski, 1997 WL 207807 (April 25, 1997, Wash. App. Div. 2)(unpublished opinion).

After Melody filed her appellate brief, Country Companies filed a Motion to Dismiss. At the hearing on that Motion to Dismiss, on 3/8/03, as shown by the tape in Melody's possession, Country Companies was nonresponsive to the Commissioner's inquiry about the existence of a satisfied judgment and a judgment procured by fraud. Country Companies was terribly unprepared and the Court of Appeals made another sua sponte Motion for another hearing. In fact, on page 8 of its brief, Country Companies cites a death penalty case, namely State v. Campbell, 112 Wn.2d 186, 770 P.2d 620 (1989), whereby the party was divested of all civil rights. The Commissioner made a Motion on the Merits, which was heard on 4/12/02. It was unclear whether it was a Motion on the Merits to affirm or reverse. Nevertheless, the exact same issues were heard at this second hearing and Country Companies was thus given an opportunity to rectify its shortcomings on the hearing of 3/8/02. The Motion on the Merits operated to give the form of a ***different*** hearing, while substantively hearing the ***same*** issues.

Opposing counsel's former boss and current friend is Chief Justice of the Court of Appeals. The Commissioner mysteriously granted attorney fees without complying with proper procedure. Country Companies never served Melody a declaration of attorney fees. Therefore,

Melody was unable to respond. The award of attorney fees in spite of the fact Country Companies exercised subterfuge and repeated the same old conclusory statements and same cases ad nauseum, is a travesty. Furthermore, Country Companies faxed legal documents to Melody's place of work, disrupting the ordinary privacy Melody is entitled during the course of her litigation, as well as defaming her to her coworkers. Country Companies cited an old case number as a cheap way to recharacterize the case as relitigation. Country Companies was nonresponsive at both hearings in addressing the question about the satisfaction of judgment and procurement of judgment through fraud issues. The Court of Appeals denied all of Melody's motions in one summary dismissal ***without opinion***. It is suspicious that the Court of Appeals did this summary dismissal on the day after the 90th day Melody was to file an appeal on another matter via Writ of Certiorari to the U.S. Supreme Court at case No. 02-551.

Since Country Companies didn't request attorney fees, they have been ***awarded sua sponte*** by the Court of Appeals for Division One.

The Commissioner admitted that Petitioner Melody Primm ". . .is very sincere in her arguments". Where the award of attorney fees is discretionary, as here, and a party carried out the appeal in good faith, the court should decline attorney fees. Fircrest Supply, Inc. v. Plummer, 30 Wn.App. 384, 634 P.2d 891 (1981). Yet, attorney fees were nevertheless granted in spite of Melody's sincerity and good faith.

The Commissioner ignores the fraud issue completely, and distorts the record with regard to Melody's argument under CR 5(b)(1) in the King County Superior Court. To clarify, Melody was not served Country Companies's memo in Opposition to Melody's Motion to Amend, nor did Melody receive its Proposed Order in the Superior Court. In King County Superior Court, Melody filed a Motion to Amend in order to state a CR 60 Motion. Country Companies subsequently filed but did not serve "Defendant Country Companies' Memorandum In Opposition to Plaintiff's Motion to Amend" nor did it serve its "Proposed Order". The Commissioner is seriously in error on this point since Melody's Due Process right to notice is violated.

The Commissioner literally said falsehoods that contradicted the record. In can be proved that his opinion was purely cosmetic. At page 7 of his ruling, the Commissioner lies and says that Melody received the Motion in Superior Court in Opposition to Melody's Motion to Amend. He confuses the record and misstates Melody's argument in the Court of Appeals appeal. To clarify, #1, Melody filed a Motion to Show Cause in Superior Court, in order to show Country Companies's judgment was satisfied and also was procured by fraud. #2, Country Companies filed a Motion in Opposition to this Motion noting that Melody cited the incorrect law. #3, Melody later filed a Motion To Amend her Motion to state the correct law under CR 60. #4, Country Companies then filed but ***did not serve*** a Motion (and Proposed Order that was eventually signed) in Opposition to Melody's Motion to Amend. The

Commissioner cites #3, and says this is proof Melody had notice of #4.

No one knew this absurd construction of chronology better than the Commissioner. The Commissioner, afterall, heard the facts twice under oral argument on the hearing on the Motion to Dismiss and the hearing on the Motion on the Merits.

RAP 18.5(a) states that "If a person does not have an attorney of record, service should be made upon the person". Of the documents Melody did receive, Melody ***never*** received one document via personal service. Nevertheless, Country Companies was granted attorney fees.

The State Supreme Court addresses Melody in its letterhead as "Mr.". And, in one letter concerning Melody's former appeal, the Washington State Supreme Court said in a letter "Usually there is at least 3 months" until it hears a petition. Yet, while Melody's appeal at case no. 02-551 was pending before this U.S. Supreme Court, and Melody was litigating this matter of CR 60 and attorney fees and costs, the Washington Supreme Court stated in a letter "Usually there is at least 5 months" until it hears a petition. Apparently, the Washington Supreme Court was conveniently tacking on an extra 60 days to track the results of Melody's appeal in the U.S. Supreme Court. Clearly, there is a conspiracy and prejudice against Melody in this case.

When the Washington Supreme Court denied certiorari on the CR 60 issues and attorney fee issues, and said that Melody could not continue the litigation until sanctions at all levels of courts are paid, including the over ten

thousand dollars in sanctions and attorney fees, the Court of Appeals suddenly awarded an untimely cost bill that was never served on Melody. Unless there is ex parte communication between Country Companies, the Court of Appeals and the Washington Supreme Court, there is no explanation for the Washington Supreme Court to tailor its opinion that way, as if to anticipate further controversy (regarding the cost bill) in the Court of Appeals below it.

In a statement recently made in the Seattle Times, Friday, January 10, 2003, page A17, former Washington State Supreme Court justice, Charles Z. Smith stated that sinister activity is going on amidst the Washington Supreme Court judges. If certiorari is granted, I will obtain an affidavit by Justice Smith for use in my brief on the merits in support of my appeal.

The foregoing shows clear unequal protection under the law and Due Process violations. Washington isn't ruled by law, but by terror.

No cost bill was ever served, and costs were granted in an untimely fashion about a year later from the previous litigation. Along with every other foregoing matter, Melody is coerced from challenging it which violates Due Process and Equal Protection.

CONCLUSION

The Washington Courts, especially the Court of Appeals for Division One, have evaded the Constitutional issues paramount in Melody's litigation with Country Companies. The orders are either without opinion, or blatantly distort the record as was done in the Commissioner's ruling. As stated by this Court, "If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects a claim, but avoids all reference to it, is as much against the right. . .as if it has been specifically referred to and the right directly refused". Chapman v. Goodnow's Adm'r, 123 U.S. 540, 548 (1887). For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant a hearing of the order of denial, vacate the order, grant the petition and review the judgment and opinion below.

Respectfully Submitted,

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June 29, 2003 (corrected on November 4, 2003).

Appendix A-1

The Supreme Court of Washington

Melody F. Primm,

Petitioner,

v.

Country Companies,

Respondent.

No. 73004-1

ORDER

C/A No. 49739-1-I

Department II of the Court (composed of Chief Justice Alexander and Justices Madsen, Ireland, Chambers and Fairhurst) considered this matter at its April 1, 2003, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied. An award of terms in the amount of $250 is imposed against the Petitioner and in favor of the Respondent. The Petitioner's right to participate further in litigation with the Respondent is conditioned on her payment to the Respondent of the $250 terms provided for in this order, as well as the payment of all other terms or sanctions

previously imposed against her in this and all other litigation with the Respondent.

DATED at Olympia, Washington this 1st day of April, 2003.

For the Court.

Gerry Alexander

S/_____

Chief Justice

Appendix A-2

THE COURT OF APPEALS OF WASHINGTON,
DIVISION ONE

Melody F. Primm,
Appellant
v.
Country Companies,
Respondent.
No. 49739-1-I

ORDER DENYING
MOTIONS TO MODIFY

Appellant Melody Primm has filed various motions seeking to modify the commissioner's ruling granting a court's motion on the merits to affirm and the commissioner's ruling awarding attorney fees and costs on appeal. We have considered the following motions filed by appellant and have determined that they should be denied: Motion in Opposition to Paying Attorney fees (filed May 29, 2002); Motion to Modify Commissioner's Ruling (filed May 29, 2002); Motion for Hearing on Attorney Fees Pursuant to RAP 18.1(F)(filed June 3, 2002); Motion and Opposition to Commissioner's Award of Attorney Fees (filed June 11, 2002); Motion for Extension of Time For Hearing (filed June 11,

2002); and Motion to Strike and in Opposition to Country's Response (filed June 11, 2002).

Now, therefore, it is hereby

ORDERED that the listed motions, including appellant's motions to modify the commissioner's rulings granting a motion on the merits to affirm and awarding attorney fees on appeal, are denied.

Done this 31st day of July, 2002.

S//Judge Coleman.

S//Judge Agid

S//Judge Schindler

Appendix A-3

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

Melody F. Primm,

Appellant

v.

Country Companies,

Respondent

No. 49739-1-I

COMMISIONER'S RULING GRANTING MOTION ON THE MERITS TO AFFIRM

Melody primm lost an arbitration with her former employer. The arbitration award culminated in the entry of a judgment that included an award to the employer of ½ of the arbitration fees. Primm did not appeal the judgment, but she did move to vacate the arbitration award. The superior court denied her motion to vacate. Primm appealed that ruling and did not prevail. On the same day that the decision in her first appeal was announced, Primm filed a motion in superior court seeking to satisfy or reduce a portion of the judgment lien, arguing that the ½ of arbitration fees awarded to the employer had previously been paid to the arbitrator by the employer's insurer. The superior court denied her motion and she now seeks to appeal the ruling of the superior court.

Primm raised substantially similar arguments her prior untimely and unsuccessful effort to vacate the arbitration award (sic). Primm's prior appeal of that matter was unsuccessful. Primm's motion to satisfy or reduce the judgment is an improper collateral attack on the judgment. The post-judgment ruling denying this attempt does not affect a substantial right and is not appealable. RAP (***Page2 starts here***) 2.2(a)(13). But, even if the superior court ruling is appealable, the appeal lacks any arguable merit.

FACTS: The limited record provided by Primm reveals that a dispute between Primm and Country Companies was submitted to arbitration. It appears that the arbitration was decided on July 13, 2000, including an award to Country of ½ of the arbitration fees. The award was delivered to the parties on July 14, 2000. The trial court confirmed the arbitration award on August 11, 2000, entering the judgment in favor of Country for $3,516.76. On September 5, 2000, Primm wrote to Country's counsel explaining she had earlier learned that the arbitration fees had been paid by Crum and Forrester, Country's insurer. On November 8, 2000, Primm moved to vacate the arbitration award. The superior court denied the motion to vacate as untimely. Primm appealed.

On October 29, 2001, this court issued its opinion affirming the trial court and imposing

sanctions of $1,000 for a frivolous appeal.[1] On the same day, Primm prepared a "MOTION FOR DEFENDANT TO SHOW CAUSE WHY RECORDED LIEN IS NOT FRIVOLOUS AND SHOULD NOT BE REDUCED AND FOR COSTS AND SANCTIONS". In her motion, Primm stated the issue: "[s]hould Defendant's recorded judgment lien be reduced in Plaintiff's favor since part of it has been satisfied by a third party's gratuitous payment?" She argued that the judgment lien was frivolous (***page 3 begins here***) because it had been partially satisfied by virtue of the payment of arbitration fees by a third person.

On November 16, 2001, the superior court denied the motion, imposed sanctions of $500 under CR 11, and ordered that "any further attempts by the Plaintiff to relitigate these claims in this Court will result in a finding that the Plaintiff is in contempt of this Court."

Primm filed a notice of appeal. Country has moved to dismiss arguing that the post-judgment order is not appealable as a matter of right. I passed the motion to dismiss to the merits and scheduled a hearing on a court's motion on the merits to affirm.

CRITERIA FOR DETERMINING WHETHER TO GRANT A MOTION THE MERITS TO AFFIRM: RAP 18.14(e)(1) provides: "A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these

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[1] *No. 47821-4-I. Primm is currently seeking review of the first appeal in the Washington Supreme Court.*

determinations, the . . .commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency." Applying these criteria in light of State v. Rolax[2], the issues presented clearly lack merit.

(***page 4 starts here***) **DECISION**: Primm seeks to appeal the denial of a motion to reduce or satisfy the judgment against Primm. RAP 2.2(a)(13) allows review of a "final order made after judgment which affects a substantial right." As set forth below, the relief sought in this motion was substantially the same as Primm's prior unsuccessful motion to vacate. I am not convinced that denying the same relief previously sought affects a substantial right. Neither is her motion a bona fide motion to vacate judgment appealable under RAP 2.2(a)(10). But even if Primm's motion to reduce or satisfy the judgment could be viewed as appealable, I conclude that the criteria for a motion on the merits to affirm are satisfied and Primm is not entitled to any relief on appeal.

At the heart of this matter is Primm's argument that she can raise the issue of the payment of the arbitrator's fee by Country Company's insurer by filing a post-judgment motion asserting that the judgment had been partially satisfied. But this same issue was part

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[2] *104 Wn.2d 129, 702 P.2d 1185 (1985).*

of her untimely November 8, 2000 motion to vacate the arbitration award, and cannot be renewed in the form of a motion to compel a partial satisfaction of judgment.

Primm acknowledges that her November 8, 2000 motion to vacate the arbitration aware included her arguments about the payment of the arbitration fee and this issue was presented in her first appeal. Primm is not entitled to repackage that same argument in the form of a motion for partial satisfaction of judgment in an attempt to reargue the issue in superior court.

First, there has been no satisfaction of the judgment. A judgment is fully or partially satisfied if the judgment creditor pays all or a portion of the judgment after the judgment is entered. RCW 4.52.100. Primm disputes that the amount awarded in the judgment was ever owing because of the payment of the arbitration fees by Country's insurer. But a judgment is not "satisfied" when the judgment debtor simply disputes the propriety of the amounts included in the judgment.

Second, Primm has already unsuccessfully raised her challenge to the amount of the arbitration fee awarded to Country. As set forth in the opinion deciding Primm's first appeal, the opportunities to challenge the results of an arbitration are expressly limited by statute. Primm's window of opportunity to challenge the arbitration award was three months after July 14, 2000, the date the copy of the award was delivered to her. Primm knew of the payment of the arbitration fees by Country's insurer before

September 5, 2000. She did not timely challenge the results of the arbitration. To the extent that CR 60 does not open a door to allow what is, in effect, a second untimely motion to challenge the results of the arbitration.

Third, Primm argues that the judgment is fraudulent, but she makes no showing of fraud. Generally, a stranger would not voluntarily pay another person's obligations and then sue for a judgment. But an arbitration is a special proceeding. If one of the parties to arbitration has paid the entire arbitration fee, (***page 6 starts here***) then it is not fraud to award that party ½ of the fees. The fact that Country's agent paid the fee is of no consequence. Primm is unhappy with the arbitrator's performance and contends the arbitrator did not properly conduct the arbitration. But any challenge to the validity of the arbitration fee had to be raised in a timely manner. There is no constitutional right to make repeated challenges to the propriety of the arbitration award and fees.

Fourth, Primm does not establish any procedural impropriety. Primm's motion to satisfy or reduce the judgment included references to a frivolous lien, citing a provision of the mechanics and materialman's lien statute. On November 1, 2001, Country filed its opposition to the motion to show cause, arguing that the motion was frivolous because the judgment lien is not related to the statute cited by Primm. The next day, November 2, Primm filed her "MOTION FOR TIME TO AMEND EARLIER MOTION PURSUANT TO RCW 4.82.250 AND TO STRIKE DEFENDANT'S MOTION AND FOR

SANCTIONS", responding to Country's opposition and asking to delete her citation to the mechanics and materialman's lien statute and rely upon other authority. The superior court then denied Primm's motion to show cause and impose sanctions. Primm argues she did not receive proper service of Country's opposition to her motion to show cause. Country provides an affidavit that the opposition was served on November 1 by delivering the pleading to the residence of Melody Primm at the home "by leaving a true and correct copy of the same in a safe and secure location." Primm cites several cases that deal with service required to commence a lawsuit. But the strict (***page 7 starts here***) standards applicable to service of a summons and complaint do not apply to service of pleadings during the course of litigation. Primm relies upon the provision in CR 5(b)(1) that allows service upon a pro se party by leaving the document at the "dwelling house or usual place of abode with some person of suitable age and discretion then residing therein". But Primm obviously received the opposition because the very next day she was able to file her motion to amend in response to the opposition. And in her response, she did not raise any defect in the manner of service of the opposition. Primm waived her right to raise any defect in service of Country's opposition to the motion to show cause.

Fifth, Primm challenges the portion of the superior court order declaring that she will be in contempt of court if she seeks to relitigate the same issue again. But a court has the discretion to limit repeated filings by a party seeking to

relitigate issues. In re Marriage of Giardano, 57 Wn.App.74, 78 n.1, 787 P.2d 51 (1990)(trial court "may, in its discretion, place reasonable restitution on any litigant who abuses the judicial process.")

Sixth, Primm's challenges to the use of motions on the merits are based primarily upon the dissent in Rolax. The majority ruling in Rolax recognizes the validity of the use of motion on the merits.[3] Neither does estoppel preclude my consideration of these issues.

(***page 8 starts here***) **FEES ON APPEAL**: Country requests an award of fees for a frivolous appeal. In determining whether an appeal is frivolous justifying the imposition of terms pursuant to RAP 18.9(a), the court is guided by the following considerations: (1) a civil appellant has the right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. Biggs v. Vall, 119 Wn.2d 129, 138, 830 P.2d 350 (1992);

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[3] As I indicated at oral argument, I grant Primm's motion for an extension of time to file her "REPLY TO COURT'S SUA SPONTE MOTION ON THE MERITS" and I have considered her reply.

Streater v. White, 26 Wn.App. 430, 613 P.2d 187, review denied, 94 Wn.2d 1014 (1980).

Even though she is very sincere in her arguments, there are no debatable issues upon which reasonable minds might differ. This appeal is so devoid of merit that there was no reasonable possibility of reversal. Country is awarded its reasonable attorney fees on appeal upon its compliance with RAP 18.1.

CONCLUSION: Primm may not relitigate issues she raised in her first appeal. Her only relief is available through her pending petition for discretionary review in the Washington Supreme Court. Her attempt to repackage her challenge to the validity of the arbitrator's award of costs cannot take the form of a motion for a (***page 9 starts here***) partial satisfaction of judgment. Even assuming the superior court order rejecting her motion to show cause is appealable, her arguments lack any merit. The criteria for a motion on the merits are satisfied. Now, therefore, it is hereby ORDERED that the decision of the trial court is affirmed and Country is awarded its reasonable attorney fees on appeal upon its compliance with RAP 18.1.

Done this 29th day of April, 2002.

S// James Verellen
Court Commissioner

Appendix A-4

SUPERIOR COURT OF WASHINGTON FOR
COUNTY OF KING

Melody F. Primm,

Plaintiff,

v.

Country Companies,

Defendant.

No. 97-2-16822-8SEA

ORDER DENYING PLAINTIFF'S MOTION FOR SHOW CAUSE AND GRANTING CR 11 SANCTIONS

(Proposed Order drafted by opposing counsel and signed by Judge Barnett)

THIS MATTER has come before the Court on plaintiff's "Motion for Defendant to Show Cause Why Recorded Lien is Not Frivolous". The Court has reviewed the Motion, the defendant Country Companies' Memorandum in Opposition thereto, and related pleadings submitted by both parties.

The Court finds that Plaintiff has violated CR 11 by filing a motion that is not warranted by existing law nor by a good faith argument for the extension, modification, or reversal of existing law.

The Court further finds that Plaintiff has interposed the motion for an improper purpose.

IT IS THEREFORE ORDERED that Plaintiff's Motion is DENIED.

IT IS FURTHER ORDERED that Plaintiff shall pay the sum of $500.00 to the Defendant, within 14 days of the date of this Order, as a sanction for violating CR 11.

IT IS FURTHER ORDERED that any further attempts by the Plaintiff to relitigate these claims in this Court will result in a finding that the Plaintiff is in contempt of this Court.

DONE this 16th day of November, 2001.

S//Suzanne M. Barnett
Superior Court Judge

Presented By:

WILSON SMITH COCHRAN DICKERSON

By John M. Silk, WSBA #15035
Sally E. Metteer, WSBA #20869

Appendix A-5

Melody Primm
15710 1st Avenue NE
Seattle, WA 98155

4/13/01

Dear Crum and Forrester:

I am writing this letter because you have attached my Credit with a judgment that is under appeal with The Court Of Appeals. This judgment is from ½ of an Arbitration that occurred 6/27/00 in Seattle with Country Companies without a hearing of my witnesses for the 2nd time. You paid my half without my knowledge or permission. This is before the Colorado Attorney General's office. This needs to be removed from my credit immediately or I will have no choice but to ask the media for help. You had no right to pay it as I was represented by counsel at the time. Your practices are unethical. This judgment was entered by John Silk and he will not return my calls. Please let me know immediately what you plan to do.

206-448-1427

Melody Primm

S// Melody Primm